

आयकर अपीलीय अधिकरण पुणे न्यायपीठ "ए" पुणे में
**IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "A", PUNE**

सुश्री सुषमा चावला, न्यायिक सदस्य एवं, श्री डी. करुणाकरा राव, लेखा सदस्य के समक्ष
BEFORE MS. SUSHMA CHOWLA, JM AND SHRI D. KARUNAKARA RAO, AM

आयकर अपील सं. / ITA No.5410/DEL/2010
निर्धारण वर्ष / Assessment Year : 2006-07

M/s.Rieter India Private Limited,
Gat No.134/1, Vadhu Road,
Off Pune Nagar Road,
Koregaon Bhima, Tal: Shirur,
Pune-412207

.... अपीलार्थी/Appellant

PAN: AAACR3556P

Vs.

The Deputy Commissioner of Income-tax,
Circle 1(2), Pune

.... प्रत्यर्थी / Respondent

Assessee by : Shri Rajendra Agiwal
Revenue by : Shri Rajeev Kumar, CIT

सुनवाई की तारीख / Date of Hearing : 12.03.2018	घोषणा की तारीख / Date of Pronouncement: 23.03.2018
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आदेश / ORDER

PER SUSHMA CHOWLA, JM:

The appeal filed by the assessee is against order of Addl.CIT, Range-15, New Delhi relating to assessment year 2006-07 passed under section 143(3) r.w.s. 144C of the Income Tax Act, 1961 (in short 'the Act').

2. The learned Authorized Representative for the assessee at the outset pointed out that the issue raised in the present appeal is covered by the orders of Tribunal in the case of assessee itself in earlier years. He further stated that the assessee was receiving commission from associated enterprises for sale of machines in India and also was receiving service income for installation and servicing of machines. The assessee had applied TNMM method to benchmark its international transactions. The Transfer Pricing Officer (TPO) on the other hand, held CUP method is to be applied for benchmarking international transactions. He further pointed out that the Tribunal upheld the application of external CUP method to be most appropriate method. In this regard, he was of the view that there was no dispute as far as method was concerned. Our attention was drawn to the order of Tribunal relating to assessment years 2002-03 to 2005-06. He further stated that two concerns ATE Marketing (P.) Ltd. and M/s. Super Sales India Ltd. had controlled transactions and the CIT(A) in earlier years rejected the said concerns. The Revenue was in appeal before the Tribunal and the appeal of Revenue was dismissed. Finally, one comparable was left i.e. Voltas Ltd., which was receiving both commission and service charges. The learned Authorized Representative for the assessee pointed out that in case assessee's commission and service charges are aggregated, then the transaction was at arm's length. The learned Authorized Representative for the assessee pointed out that ground of appeal No.8 was the effective ground of appeal raised by the assessee on the substantive addition made in the hands of assessee i.e. assessee is aggrieved by the order of Assessing Officer/DRP/TPO in considering the effective commission rate earned by the assessee for services rendered to associated enterprises during the year i.e. after including income received against services provided by it along with commission received for providing marketing support services, for comparison with mean commission rate

earned by selected selling agents. The said ground of appeal No.8 reads as under:-

- “8. *The Ld. DRP and the Ld. AO (following the directions of the Ld. DRP), erred on facts and in law, in upholding the Ld. TPO’s stance of not considering the effective commission rate earned by the appellant for services rendered to AEs during the year (i.e. after including the income received for providing installation, commissioning and warranty support services along with the commission received for providing marking support services) for comparison with the mean commission rate earned by the selected selling agents.*”

3. The assessee vide grounds of appeal No.9 and 10 has agitated the issue of exclusion of two concerns ATE Marketing (P.) Ltd. and M/s. Super Sales India Ltd. on the ground that the same operated in controlled environment. The grounds of appeal No.9 and 10 read as under:-

- “9. *The Ld. DRP and the Ld. AO (following the directions of the Ld. DRP), erred on facts and in law, in upholding the Ld. TPO’s stance of not taking cognizance of the fact that two of the selected selling agents, namely ATE and Super Sales operated in a controlled environment and that the selection of such companies goes against the legal principle of comparability with ‘uncontrolled transaction’ as laid down in the Act.*
10. *The Ld. DRP and the Ld. AO (following the directions of the Ld. DRP), erred on facts and in law, in upholding the Ld. TPO’s stance of not taking cognizance of the fact that in view of the legal provisions of TP, two of the selling agents namely ATE and Super Sales, were not considered for the purpose of determining the mean arm’s length commission rate by the Ld. TPO during the TP study report assessment proceedings for financial year (‘FY’) 2001-02 as well as by the Ld. Commissioner of Income Tax- Appeals in orders issued by him for FYs 2001-02, 2002-03, 2003-04 and 2004-05 for the appellant.*”

4. The assessee further vide grounds of appeal No.17 and 18 has raised small corporate issues i.e. in respect of disallowance of ₹ 1,37,765/- under section 40(a)(i) of the Act on account of short deduction of tax at source and non-allowance of depreciation @ 80% on voltage stabilizers. The said grounds of appeal No.17 and 18 read as under:-

- “17. *The Ld. DRP and the Ld. AO erred on facts and in law in not rendering any order in respect of disallowance of Rs.1,37,765/- under section 40(a)(i) of the Act on account of short deduction of tax at source made by the appellant on payment made to Master Sound.*

18. *The Ld. DRP and the Ld. AO erred on facts and in law in not rendering any order in respect of non-allowing of depreciation @ 80% o voltage stabilizers.”*

5. Before parting, the learned Authorized Representative for the assessee pointed out that during the course of TP proceedings, the assessee had given the working of its margin of 3.6% but same was wrongly submitted because of calculation error. He pointed out that the margin was 5.26% and in this regard, tabulated details were filed. He further pointed out that during the year, installation activity was less i.e. only to the extent of 28.91%. He further submitted that margins of assessee should be adopted at 5.26% as against the margin shown by Voltas Ltd. at 4%.

6. The learned Departmental Representative for the Revenue on the other hand, pointed out that the assessee was offering two different services i.e. receiving commission for sale of machines in India and also receiving income from services provided to associated enterprises and the two being distinct and variant, should be benchmarked separately.

7. We have heard the rival contentions and perused the record. The first issue which arises in the present appeal is transfer pricing adjustment made in the hands of assessee by the Assessing Officer/DRP/TPO by selecting external CUP method as most appropriate method. The assessee was engaged in providing marketing support services for the sales of its holding company M/s. Rieter Holding AG, Switzerland. The assessee in addition to commission received on sale of machines also received separate charges for services provided in the field of installation and commissioning of said machines. The marketing support services were provided to three associated enterprises. The assessee had charged commission for providing aforesaid marketing support

services. In addition, the assessee was remunerated separately for installation and commissioning of machines sold by Rieter group and also for providing warranty support services. The TPO had applied CUP method as the most appropriate method and had picked up three comparables ATE Marketing (P.) Ltd., M/s. Super Sales India Ltd. and Voltas Ltd. to benchmark international transactions of assessee. There is no dispute between the assessee and the Assessing Officer/DRP/TPO vis-à-vis the selection of method to be applied.

8. Similar issue of benchmarking the international transactions of assessee arose before the Tribunal in assessment years 2002-03 to 2005-06 and the Tribunal vide consolidated order dated 20.09.2017 with lead order in Cross Appeals in ITA No.114/Del/2008 and in ITA No.125/Del/2008, held that CUP method was the most appropriate method and international transactions of assessee had to be benchmarked by taking external concerns as comparables in different years which arose before the Tribunal; different concerns were picked up by the TPO as being comparable. We find that CIT(A) in earlier years had rejected the transaction of LMW with Super Sales Agency and TECPL with ATE Marketing (P.) Ltd. having controlled transaction and hence, not comparable. The Tribunal upheld the findings of CIT(A) in assessment years 2003-04 to 2005-06. After the said concerns were rejected, the only concern which remained was M/s. Voltas Ltd. The Tribunal in turn, relying on the decision of Delhi Bench of Tribunal in M/s. Vedaris Technology (P) Ltd. Vs. ACIT in ITA No.4372(Del)/2009 and CO No.35(Del)/2010, relating to assessment year 2002-03, vide order dated 31.03.2010 had held that for determining the arm's length, margin of one comparable can be applied under the transfer pricing provisions. The Tribunal thus, upheld the order of CIT(A) in applying M/s. Voltas Ltd. as comparable and appeal of Revenue was rejected.

9. The issue before us is similar to the issue before the Tribunal in earlier years and following the same parity of reasoning, we hold that international transactions undertaken by the assessee of providing marketing support services to its associated enterprises and also earning service charges on installation and commissioning of machines and is to be aggregated and the margin is to be compared to the margin earned by other concern i.e. M/s. Voltas Ltd., which is also performing functions of providing marketing support services to its associated enterprises and also receiving service commission on commissioning and installation services provided by it.

10. Now, coming to the margins shown by the assessee. During the course of TP proceedings, the assessee had computed its margins at 3.6%. However, during the course of hearing, the assessee has furnished computation of revised effective commission rates, wherein it has pointed out that earlier it had made an error in reporting total commission and service income of machines and revised effective working and as per the revised effective working of commission rates, the margins of assessee i.e. total income earned by the assessee as percentage of total value of machines installed by Rieter India is 5.26%. The rate charged by M/s. Voltas Ltd. to LMW was 4%. Since the margins shown by the assessee were more than margins earned by M/s. Voltas Ltd., then no adjustment on account of arm's length price of international transactions is to be made in the hands of assessee. We have gone through details furnished by the assessee and in view of assessee declaring margins of 5.26% as against margins of M/s. Voltas Ltd. for the year at 4%, we hold that international transaction undertaken by the assessee is at arm's length and no adjustment is to be made to the same. Accordingly, we allow the claim of assessee in entirety and effective grounds of

appeal No.8, 9 and 10 are thus, allowed. All other grounds of appeal raised by the assessee in this regard would become academic.

11. Now, coming to the corporate issue raised vide grounds of appeal No.17 and 18, wherein the assessee fairly pointed out that the same were not adjudicated by the DRP. However, rectification application has been filed by the assessee before the Assessing Officer in this regard. Accordingly, we direct the Assessing Officer to dispose of rectification application of assessee. The grounds of appeal No.17 and 18 raised by the assessee are thus, allowed for statistical purposes.

12. In the result, appeal of assessee is allowed as indicated above.

Order pronounced on this 23rd day of March, 2018.

Sd/- (D.KARUNAKARA RAO)	Sd/- (SUSHMA CHOWLA)
लेखा सदस्य / ACCOUNTANT MEMBER	न्यायिक सदस्य / JUDICIAL MEMBER

पुणे / Pune; दिनांक Dated : 23rd March, 2018.

GCVSR

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order is forwarded to :

1. The Appellant;
2. The Respondent;
3. The DRP-II, Delhi;
4. The CIT, Delhi – V, New Delhi
5. The DR 'A', ITAT, Pune;
6. Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune